

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

Thomas Johnson,	:	Case No. 3:06 CV 0132
Petitioner,	:	
vs.	:	
Khelleh Konteh, Warden,	:	<b><u>MAGISTRATE'S REPORT AND RECOMMENDATION</u></b>
Respondent.	:	

This matter is before the undersigned Magistrate pursuant to Local Rule 72.2(b)(2)<sup>1</sup>. Pending is Petitioner's Writ of Habeas Corpus filed pursuant to 28 U. S. C. § 2254<sup>2</sup> (Docket No. 1). For the reasons that follow, the Magistrate recommends that this case be dismissed for lack of prosecution. After the case was filed, respondent filed a motion to dismiss (Docket No. 8) and petitioner on 8/10/06 filed a motion to stay the proceedings which the Court granted on 9/26/06

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<sup>1</sup>

The Clerk shall refer all *pro se* petitions for habeas corpus filed under 28 U.S.C. § 2254, provided such petition has first been reviewed by the Court pursuant to 28 U.S.C. § 1915(d) and Rule 4 of the Rules Governing § 2254 Cases and a decision has been made to require a response to the petition, to a Magistrate Judge for a Report and Recommendation as provided in Local Rule 72.1, *Duties of United States Magistrate Judges*.

<sup>2</sup>

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the constitution or laws or treaties of the United States. 28 U. S. C. § 2254 (a) (Thomson/West 2005).

(Docket Nos. 14 and 15). The order granting petitioner's motion to stay required the petitioner to report to the Court in writing by 12/1/06 and every 30 days thereafter. Petitioner has failed to file further pleadings or respond to the order to show cause, entered 12/22/06, explaining why the case should not be dismissed for lack of prosecution.

Due to petitioner's failure to comply with and respond to proper Court orders, the magistrate recommends that this case be dismissed for lack of prosecution.

So ordered.

/s/Vernelis K. Armstrong  
United States Magistrate Judge

Dated: 02/28/07

**Notice**

Please take notice that as of this date the Magistrate's Report and Recommendation attached hereto has been filed.

Please be advised that, pursuant to Rule 72.3(b) of the Local Rules for this district, the parties have ten (10) days after being served in which to file objections to said Report and Recommendation. A party desiring to respond to an objection must do so within ten (10) days after the objection has been served.

Please be further advised that the Sixth Circuit Court of Appeals, in *United States v. Walters*, 638 F.2d 947 (6<sup>th</sup> Cir. 1981) held that failure to file a timely objection to a Magistrate's Report and Recommendation foreclosed appeal to the Court of Appeals. In *Thomas v. Arn*, 106 S.Ct. 466 (1985), the Supreme Court upheld that authority of the Court of Appeals to condition the right of appeal on the filing of timely objections to a Report and Recommendation.